

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DERRICK SMITH,

Defendant and Appellant.

B220555

(Los Angeles County
Super. Ct. No. TA073637)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Eleanor Hunter, Judge. Affirmed.

Libby A. Ryan, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On February 14, 2004, Derrick Smith went to his girlfriend's home and displayed a handgun in her presence. During a telephone call on February 16, 2004, Smith and his girlfriend argued about the handgun, and Smith became angry, and threatened her, "It's on, I'm going to kill you." On February 19, 2004, Smith's girlfriend went to court for a restraining order; Smith was arrested when he appeared in court. On February 23, 2004, the People filed a felony complaint charging Smith with one count of making a criminal threat, and one count of exhibiting a deadly weapon. (Pen. Code, §§ 422; 417.) On March 8, 2004, Smith waived his constitutional trial rights, and pleaded guilty to one count of making a criminal threat. On April 5, 2004, the trial court suspended imposition of sentence, and placed Smith on probation for a period of five years.

On March 13, 2006, Smith admitted he had violated his probation by selling marijuana, and the court revoked and reinstated probation on condition that he serve 31 days in county jail. On May 19, 2008, Smith admitted he had violated his probation again, and at an ensuing hearing on June 10, 2008, the court reinstated probation on condition that Smith serve an additional 74 days in county jail. At the same time, the court extended probation to August 25, 2009, and ordered Smith to complete a 52-week domestic violence program. Three months after the June 2008 hearing (September 10, 2008), the court placed Smith back on supervised probation. On March 10, 2009, the court extended probation to August 3, 2010, and ordered that probation would expire on August 3, 2010. Prior to the end of probation (September 10, 2009), the court conducted a follow-up hearing and heard arguments on whether to revoke probation because Smith had failed to provide proof of completion of a domestic violence program; the court set the matter "two weeks out" for a supplemental probation report.

On September 28, 2009, the probation department informed the court that Smith had been arrested for disorderly conduct and resisting a police officer. On October 19, 2009, the court found Smith in violation of probation based on his failure to complete domestic violence counseling. On November 10, 2009, the trial court sentenced Smith to serve a 2-year mid-term on his criminal threat conviction.

Smith filed a timely notice of appeal, and we later appointed counsel to represent him in our court. On August 31, 2010, Smith's appointed counsel filed an opening brief raising no issues. On the same day, we notified Smith by letter that he could submit any ground of appeal, argument or contention which he wished our court to consider. Smith has not filed a response. We have independently reviewed the record submitted for this appeal, and are satisfied that Smith's appointed counsel has fulfilled his duty, and that no arguable issues exist. (See *People v. Wende* (1979) 25 Cal.3d 436; *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgment is affirmed.

O'CONNELL, J. *

We concur:

BIGELOW, P. J.

FLIER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.